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DPS-3942
Copy 1 of 5

10 September 1958

MEMORANDUM FOR THE RECORD

SUBJECT: Negotiation of Final Contract Price for Contracts
Nos. FL-3011 and FM-3050, Westinghouse Electric
Corporation, Baltimore, Maryland

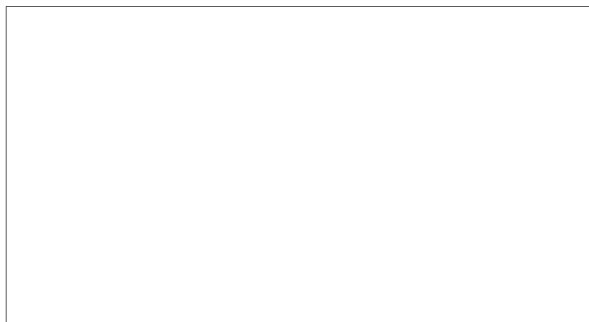
1. A meeting was held at Westinghouse Electric Corpora-
tion, Baltimore, Md., on 21 August 1958 for the purpose of
negotiation of the final contract price for Contracts Nos.
FL-3011 and FM-3050. The following personnel were in attend-
ance:

25X1 [] Westinghouse - Sales Engineer
" " - Supervisor Redetermination
25X1 [] Section, Contract Admin.
- Westinghouse - Accounting Manager
25X1 [] Westinghouse - Supervisor Termination
Section
Air Force Auditor
Air Force Auditor
Project Contracting Officer
- Contract Negotiator

25X1 2. Appendix I of Contract No. FL-3011 covered Project
CHALICE, [] and Air Force requirements for APQ-56
Radar equipment, spares and related items. Appendix II covered
25X1 field maintenance for Project CHALICE. Contract No. FM-3050
covered domestic and overseas field maintenance of APQ-56 Radar
equipment for Project []

25X1 3. On 12 and 13 August 1957 a final price was negotiated
for Items 1 through 9A less Item 7 of Appendix I of FL-3011.
The fixed amount was \$1,593,911.00 and is documented in
Amendment No. 8 and a Memorandum for the Record dated 26 August
1957 (SAPC-18843).

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4. Listed on Exhibit A, attached, is the total contract consideration for FL-3011, i.e., \$4,625,381.00. Also, the Contractor's original claim which included estimates to complete except the termination proposals which covered their interim claim for partial termination of Items 10 and 12. Based upon the Contractor's original claims an audit was performed and the results thereof were forwarded to the Contractor. The Contractor never submitted a reply regarding the questioned costs. The Air Force Auditor reaudited the Contractor's records in July 1958 as the Contractor desired to present the actual manufacturing costs. The Company never amended their original claim as they felt their accounting records adequately reflected their costs.

5. Listed below is the total contract consideration for FM-3050, i.e., \$67,384. Also, the Contractor's original claim and the results of the second audit conducted in July 1958 and the amount tentatively approved by the Contracting Officer. The Contracting Officer never made a firm offer to the Contractor other than \$67,384, the contract amount. The Contracting Officer advised the Contractor that if funds were available consideration to the overage would be given.

Item No.	Contract Amount	Contractor's Original Claim	Final Audit Approved Costs Only	Amount Questioned	Amount Allowed by Contracting Officer
1. Technicians	\$62,884	78,505	76,242	2,263	76,905
Profit (7%)		5,495		5,495	5,383
Sub-total		84,000	76,242	7,758	82,288
2. Travel at cost	4,500	2,187	2,187	--	2,187
TOTAL	\$67,384	\$86,187	\$78,429	\$7,758	\$84,475
OVERAGE		\$18,803			\$17,091

25X1 6. The meeting opened with only [redacted]
 25X1 representing the Company. They indicated that settlement of
 25X1 the termination claims would be handled by their [redacted]
 25X1 The Contracting Officer indicated that an agreed upon final
 25X1 consideration was contingent upon property accountability, resi-
 25X1 dual credits and verification of deliveries. [redacted] kept in-
 25X1 sisting that since their books reflected their costs that the
 25X1 Contracting Officer should make an offer. The Contracting Officer
 25X1 indicated that the Company had never formally revised their claim
 25X1 and therefore they should indicate their final claim. A review
 25X1 by the Contracting Officer of the intent of mutual understanding
 25X1 and trust in connection with this contract and the Project was
 25X1 given as [redacted] approach to this settlement was to put it
 25X1 mildly, "very antagonistic". The Company then agreed to indicate
 25X1 their final manufacturing costs exclusive of G&A and Royalty on
 25X1 FL-3011.

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25X1 7. Based on this information and due to the insistence
25X1 of [] the Contracting Officer made an offer of \$2,500,000
exclusive of the termination settlement. [] counteroffered
with \$2,600,000 which was unacceptable to the Contracting Officer.
The Contractor's original total claim was \$2,899,878 less \$90,896
for termination and \$4,423 for travel, making a net claim of
\$2,808,982 or a base for the above. Of this, \$2,808,982, there
was \$137,634 in manufacturing costs which the Auditor indicated
in his report was never incurred. By applying the 17% G&A and
7% fee as claimed by the Contractor to the unincurred costs of
\$137,634 the resulting total claim would amount to \$2,636,678.
25X1 This results in a concession of \$36,678 in G&A when Mr. []
made an offer of \$2,600,000. From this \$36,678 is deducted
\$3,655 which represents an amount for additional spares under
Item 15 or a net concession of \$33,023. The Auditor had taken
\$107,976 in exceptions in the G&A claim. This \$107,976 minus
the net concession of \$33,023 results in a total of \$74,953. The
Company's offer of \$2,600,000 less the approved audited costs
with 7% profit or \$2,531,981 results in a difference of \$68,019.
25X1 Based on this information, the Contracting Officer made a second
offer of \$2,550,000. [] asked to be excused in order to
consider this offer.

25X1 8, [] then joined the meeting for the purpose of
settling the termination claim. Based on audited costs and the
application of 7% profit and settlement expenses the amount of
\$61,540 and \$25,122 for Items 10 and 12 respectively or a total
of \$86,662 was allowable for this claim versus the Contractor's
claim of \$90,896. The Contractor had withdrawn 8 crystals from
the inventory and diverted to other work. It was agreed that
the Contractor should pay for these crystals. Therefore, a G&A
of 16% and 7% profit was applied or a total of \$719 as the cost
to the Contractor for the crystals. This was deducted from the
total allowable figure of \$86,662 or a net of \$85,943. The
25X1 Contracting Officer then made [] an offer of \$60,507 for
25X1 Item 10 and \$25,115 for Item 12 or a total of \$85,622. []
accepted a settlement of an even \$85,000 with the understanding
that Westinghouse would retain the crystals. This was acceptable
to the Contracting Officer.

25X1 9. [] rejoined the meeting and settlement of FM-3050
was discussed. As was noted in Paragraph 5 above, there was an
25X1 overrun claim of \$18,803. The Contracting Officer informed Mr.
[] that the contract amount of \$67,384 was as high as he could
25X1 commit himself until he knew whether funds were available to cover
any agreed upon overrun. [] was asked to explain the overrun.
This, he felt, was unnecessary and that if funds were available

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then without a doubt their \$84,000 claim exclusive of travel should be allowed. [] agreed to determine the reason for the overrun. This has been done and is the subject of his letter dated 27 August 1958 (DPS-3981) which discloses 1832 additional hours of services rendered. This will be submitted to [] for consideration. If acceptable, and if funds are available either under FL-3011 or by transfer then based on the audit report an amount of \$82,288 for services and \$2,187 for travel or a total of \$84,475 would be allowed or an \$17,091 overage.

10. Mr. [] then made an offer to settle FL-3011, the terminations and FM-3050 for the sum of \$2,729,000 including royalties but excluding travel costs. [] indicated that he could not accept this figure due to the possibility that funds for the FM-3050 would not be available. Mr. [] was advised that availability of funds would be checked and if the overage could be covered then the \$2,729,000 would be acceptable subject to the property audit report, residual credits if any, and delivery verification. Mr. [] was very surprised that there would be such a stipulation even though he had been apprised of this matter several times during the day. He also stated that there definitely should not be an adjustment of price for residual property. His contention being that this was a fixed price contract, therefore, remaining residual was the property of Westinghouse. The Contracting Officer again reviewed the original negotiations in which the Project representatives understood that the contract would be handled as a CPFF but written as a fixed price, price redeterminable in order to effect a more flexible and speedier contractual arrangement. Mr. [] stated their Management originally agreed to collect costs on a CPFF basis but that property would not be maintained in a CPFF manner but would be handled as though the contract were fixed price. [] in the interest of good relationship and in keeping with his understanding of the Project, agreed that residual property would belong to the Government and that their records would be available for property audit. The Company was advised that an Auditor would be available about 15 September 1958. Mr. [] stated that if we sent an Amendment wherein it stipulated that the price was contingent upon specified conditions that it would not be accepted and that the Amendment would be returned unsigned.

11. The \$2,729,000 is considered a fair and reasonable settlement and would be allocated as follows:

\$2,729,000	
82,288	- For FM-3050, excludes travel
<u>2,646,712</u>	
85,000	- For termination - Items 10 & 12 under FL-3011
<u>2,561,712</u>	
14,197	- For Royalty - FL-3011
<u>2,547,515</u>	- For equipment and services - FL-3011 excludes travel

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Based on the audit report and costs which conceivably could be reinstated an amount of \$2,542,451 could be allowed. The proposed figure of \$2,547,515 is \$5,064 more than the allowable figure. Since the G&A rates have not been negotiated by DOD for the calendar years 1957 and 1958 the rates used by the Contracting Officer were those that the Auditor felt might be approved. Therefore, this \$5064 concession is in the G&A area and it is felt it is justifiable to concede.

12. Upon completion of the property audit negotiations to settle Contract FL-3011 and FM-3050 will be resumed.

25X1



Contract Negotiator

ATTACHMENT

DPS/DCI:HL:pf

Distribution:

- ✓ Orig - FL-3011, Price Redetermination Folder
- 2 - FM-3050 (Prop.Sec.)
- 3 - Finance
- 4 - "
- 5 - Chrono

CONCUR:

25X1



Contracting Officer, DPS

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EXHIBIT A

<u>Item No.</u>		<u>Contract Amount</u>	<u>Contractor's Original Claim</u>	<u>Final Audit Approved Costs Only</u>	<u>Amount Questioned</u>	<u>For Non- Acceptance</u>
APPENDIX I						
1 thru 9A less Item 7 - FIXED PRICE		\$1,593,911	\$1,593,911	\$1,593,911	See Par. 3 in Memo for Rcd.	
7 & 10 thru 15 - CEILING PRICE		2,511,089	2,156,864	1,948,178	208,686	- 0 -
	Profit (7%)		150,980		150,980	
	Royalty		13,808		13,808	
	Sub-total		\$2,321,652			
16	CEILING PRICE	410,000	378,576(A)	348,282(A)	33,549	- 0 -
	Profit (7%)		26,500		26,500	
	Royalty		389		389	
	Sub-total		\$ 405,465			
(A)	After submission of claim added scope for spares for Item 16					
	Cost		3,255			
	Profit (7%)		229			
			3,484		229	
10	Partial Termination		58,071	43,266	12,822	1,983
	Profit		3,959		3,959	
	Sub-total		62,030			
12	Partial Termination		23,581	22,706		875
	Profit		862		862	
	Sub-total		24,443			
APPENDIX II						
Item 1	Ceiling Price	78,381	73,253	69,878	3,375	- 0 -
	Profit (7%)		5,128		5,128	
	Sub-total		78,381			
Item 2	Overseas differential & transportation at actual cost	32,000	4,423	4,423	- 0 -	- 0 -

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EXHIBIT A - (cont'd)

<u>Item No.</u>	<u>Contract Amount</u>	<u>Contractor's Original Claim</u>	<u>Final Audit Approved Costs Only</u>	<u>Amount Questioned</u>	<u>For Non- Acceptance</u>
TOTAL FIXED	\$1,593,911	\$1,593,911	\$1,593,911		
TOTAL	<u>3,031,470</u>	<u>2,899,878</u>	<u>2,436,733</u>	<u>460,287</u>	<u>2,858</u>
GRAND TOTAL	\$4,625,381	\$4,493,789	\$4,030,644	\$460,287	\$2,858